

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

JANICE HARGROVE WARREN

Plaintiff

Vs.

MIKE KEMP, et al

Defendants

No. 4:19-cv-00655-BSM  
February 17, 2022  
Little Rock, Arkansas  
2:33 p.m.

TRANSCRIPT OF TESTIMONY OF EARNEST DUCKERY

BEFORE THE HONORABLE BRIAN S. MILLER

UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

SARAH HOWARD JENKINS  
Sarah Howard Jenkins, PLLC  
Post Office Box 242694  
Little Rock, Arkansas 72223  
(501) 406-0905  
Sarah@shjenkinslaw.com

AUSTIN PORTER, JR.  
Porter Law Firm  
323 Center Street, Suite 1300  
Little Rock, Arkansas 72201  
(501) 244-8200  
aport5640@aol.com

On Behalf of the Defendants:

GEORGE JAY BEQUETTE, JR.  
WILLIAM CODY KEES  
Bequette, Billingsley & Kees, PA  
425 West Capitol Avenue, Suite 3200  
Little Rock, Arkansas 72201  
(501) 374-5092  
jbequette@bbpalaw.com

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computer-aided transcription.



DIRECT EXAMINATION

1 (The jury entered the courtroom.)

2 THE COURT: You can be seated.

3 Mr. Porter, call your next witness.

4 MR. PORTER: Yes, Your Honor. Earnest Duckery.

5 THE COURT: Mr. Duckery, come on down. If you  
6 would raise your right hand and I'll swear you in.

7 Have a seat on the witness stand.

8 MR. PORTER: May I begin, Your Honor?

9 THE COURT: You may.

10 EARNEST DUCKERY, PLAINTIFF'S WITNESS DULY SWORN

11 DIRECT EXAMINATION

12 BY MR. PORTER:

13 Q. Good afternoon, Mr. Duckery. How are you doing, sir?

14 A. I'm doing fine.

15 Q. Would you please remove your mask for us? Thank you.

16 Would you please state your name for the ladies and  
17 gentlemen of the jury?

18 A. Earnest Duckery.

19 Q. Mr. Duckery, where are you employed?

20 A. Wittenberg Delony & Davidson.

21 Q. Wittenberg Delony & Davidson Architects?

22 A. Yes.

23 Q. Is that correct?

24 How long have you been employed by Wittenberg -- is  
25 it Wittenberg?

DIRECT EXAMINATION

1 A. Yes, Wittenberg. Fourteen years.

2 Q. And what is your position -- can we just call it  
3 WD&D?

4 A. Sure.

5 Q. That's what most people call it anyway. Is that  
6 correct?

7 A. Yes.

8 Q. How long have you been employed by WD&D?

9 A. Fourteen years.

10 Q. Fourteen years. In what capacity?

11 A. Project manager.

12 Q. And, Mr. Duckery, for purposes of the record, I'm  
13 going to ask you to identify your race and also your sex  
14 for us, please.

15 A. African-American male.

16 Q. And so you're the project manager. Can you explain  
17 to the ladies and gentlemen of the jury what a project  
18 manager does?

19 A. Basically, my duties are -- is once a schematic  
20 design has been done for a building and the owner's okay  
21 with it, then to actually produce that building from  
22 schematic design, design the building, make construction  
23 documents, and get it ready for bid, and from time to time  
24 go to the owner, architect, and contractor's meetings  
25 throughout the project and visit the project from time to

## DIRECT EXAMINATION

1 time.

2 Q. You and I, we've met before. Have we not?

3 A. Yes, we have.

4 Q. And I believe you gave testimony during the summer of  
5 2020 in the school desegregation case. Is that correct?

6 A. If that was the time that it was, then, yeah. It's  
7 been --

8 Q. All right. Of course, you're here by subpoena. Is  
9 that correct?

10 A. That's correct.

11 Q. Didn't come -- not by your choice?

12 A. No.

13 Q. All right. Okay. Just kind of give a little  
14 background information about you, sir. It's my  
15 understanding you grew up in North Little Rock. Is that  
16 correct?

17 A. That's correct.

18 Q. Where did you go to high school?

19 A. It was old main at the time, but it's North Little  
20 Rock High again.

21 Q. Old main high school.

22 And then, of course, you went to college. Where did  
23 you go to college?

24 A. Started off at Louisiana Tech and then transferred  
25 and went to U of A Fayetteville.

## DIRECT EXAMINATION

1 Q. It's my understanding DW&D, is that an architectural  
2 firm. Is that correct?

3 A. That's correct.

4 Q. Are you an architect?

5 A. No.

6 Q. So you serve as a project manager.

7 You mentioned the terminology schematic design.

8 Would you explain to the ladies and gentlemen of the jury  
9 what a schematic design is?

10 A. Sure. Basically, once -- once we sit down with the  
11 owner and we do concept diagrams and relation of spaces  
12 and things like that, once we -- we can either go by the  
13 State standard and come up with the square footages. And  
14 we have a chief architect designer at the firm, and he  
15 comes up with the design which is basically the schematic  
16 floor plan or elevation. And then I will put that into  
17 the computer, and that's basically how you get your  
18 drawings or 3D drawings and things like that.

19 Q. And in looking at your deposition, I believe you had  
20 indicated that you had worked -- before you went to work  
21 for WD&D, did you work for -- I know them.

22 A. Woods & Carradine.

23 Q. Woods & Carradine, correct.

24 Of course, they were an African-American  
25 architectural firm. Is that correct?

DIRECT EXAMINATION

1 A. Yes. That's correct.

2 Q. You know a good friend of mine by the name of Dexter  
3 Doyne?

4 A. Yes.

5 Q. Doyne Construction?

6 A. Yes.

7 Q. He and I are church members together.

8 A. Saw Dexter last Monday.

9 Q. Okay. Very good. I'm going to try to treat you well  
10 so you can have some good things to say about me to  
11 Mr. Doyne. Okay?

12 Now -- and, of course, you grew up in the Pulaski  
13 county area. Is that correct, sir?

14 A. That's correct.

15 Q. And, of course, you're quite familiar with areas such  
16 as Sweet Home, College Station, Wrightsville, those areas  
17 in Pulaski county. Is that correct?

18 A. That's correct.

19 Q. And, of course, as you know, those are predominantly  
20 African-American communities?

21 A. Correct.

22 Q. Of course, Mills High School -- at some point in time  
23 when you started working with WD&D, of course, this  
24 architectural firm, you guys tried to, obviously, get  
25 jobs, bid for jobs in order to deal with construction

## DIRECT EXAMINATION

1 projects. Is that correct?

2 A. That's correct.

3 Q. Other than the Mills High School project, can you  
4 tell me whether or not WD&D was involved in any other high  
5 school construction within Pulaski county?

6 A. Yes. They've done Maumelle High, I think Maumelle  
7 Middle School.

8 Q. Were you employed with WD&D when Maumelle went up?

9 A. I had gotten there, but I hadn't worked on that  
10 project.

11 Q. Have you had an occasion to go out to Maumelle High  
12 School and visit those projects?

13 A. Yes.

14 Q. All right. I'm sorry. You had -- you were  
15 mentioning some other projects you were working on.

16 A. They've done Don Roberts, done some eStem editions.  
17 So they've done -- they've done a lot of Pulaski county  
18 and some Little Rock schools.

19 Q. Of course, Roberts Elementary School, that's located  
20 out in the Chenal community. Is that correct?

21 A. That's correct.

22 Q. And the Roberts Elementary School is an elementary  
23 school within Pulaski County School District. Is that  
24 correct?

25 A. Little Rock School District I believe, but within



## DIRECT EXAMINATION

1 Pulaski county. Yes.

2 Q. Yes.

3 A. Yes, sir.

4 Q. All right. Thank you.

5 Now, when you were -- and I believe you indicated  
6 that -- once you get these schematic designs I guess from  
7 the architect, what is your role at that point?

8 A. Basically, develop the -- to develop the project.

9 Q. Okay. All right. And during the course of the --  
10 the development and construction of the Mills High School  
11 -- I just kind of want to limit our talk about that --  
12 would there -- would there have been occasions that you  
13 would meet with representatives of the Pulaski County  
14 Special School District? And I'm talking about before the  
15 construction actually begun.

16 A. Yes, I did.

17 Q. Okay. And who did you meet with -- with  
18 representatives as -- a representatives of Pulaski County  
19 Special School District?

20 A. Dr. Guess and Derek Scott.

21 Q. Derek Scott. Of course, Derek Scott is a Caucasian  
22 male. Is that correct?

23 A. That's correct.

24 Q. Of course Johnny -- Jerry Guess testified here  
25 earlier, correct? Well, you probably don't know he

## DIRECT EXAMINATION

1 testified earlier.

2 But you're meeting of Dr. Jerry Guess, he's also a  
3 Caucasian male. Is that correct?

4 A. That's correct.

5 Q. And so what was the purpose of these meetings that  
6 you -- would there -- would there have been other people  
7 from WD&D who would have met with Dr. Guess and Derek  
8 Scott?

9 A. Yes.

10 Q. Who?

11 A. Brad Chilcote. And I believe in one meeting there  
12 was Jay Clark.

13 Q. Jay Clark?

14 A. Yes.

15 Q. Who is Jay Clark?

16 A. Jay Clark is an architect at WD&D and --

17 Q. And Brad Chilcote is --

18 A. He's a principal.

19 Q. He's a principal?

20 A. Yes. Basically, the way WD&D is structured, we  
21 always have a principal -- one of the principals that's  
22 over all of the projects.

23 Q. I see. So would it be fair to say that Brad  
24 Chilcote, I guess, was the -- one of the principal owners  
25 of WD&D or was he --

## DIRECT EXAMINATION

1 A. Yes. He's the principal owner. And the way our  
2 projects are structured, we have a -- we have a principal  
3 in charge, architect, and project manager.

4 Q. Okay. So Brad Chilcote -- and I believe it's spelled  
5 C-h-i-l-c-o-t-e. Does that sound about right?

6 A. That's correct.

7 Q. And you had mentioned Jay Clark. Is that correct?

8 A. Yes.

9 Q. And, of course, yourself?

10 A. Yes.

11 Q. And of course, Chilcote and Mr. Clark, are they both  
12 Caucasian?

13 A. Yes.

14 Q. So the three of you as representatives of WD&D would  
15 go -- did you go out to the Pulaski County Special School  
16 District administrative office to meet with them?

17 A. Yes, we did. Jay Clark only went once though, and  
18 then he got assigned to another project, so he was off  
19 that project.

20 Q. So were you, like, the main -- were you, like, the  
21 designated person on behalf of WD&D to see the  
22 construction of the Mills High School campus through?

23 A. The main person at the time was Roy Sinclair. And  
24 Roy Sinclair is -- he did our contract administration.

25 Q. Mr. Sinclair?

## DIRECT EXAMINATION

1 A. Yes.

2 Q. All right. So -- but whenever you had -- it's my  
3 understanding you had various meetings with  
4 representatives of the Pulaski County School District, and  
5 that would consist of Derek Scott and the superintendent,  
6 Dr. Jerry Guess. Is that correct?

7 A. I only went to -- I went to, basically, I guess we  
8 kind of called it a presentation meeting to where we  
9 showed them the proposed Mills High.

10 Q. What did you have with you when you went there?

11 A. We had floor plans and renderings.

12 Q. Floor plans?

13 A. Floor plans, elevations, and renderings.

14 Q. These are like drawings that you presented. Is that  
15 correct?

16 A. That's correct.

17 Q. And did you have, I guess, a budget -- I guess, a  
18 proposed budget of what it would cost to complete the  
19 Mills -- Mills High School construction?

20 A. For the high school, I believe we had budget of 55  
21 million.

22 Q. Okay. And it is also my understanding that part of  
23 the construction projects for the Mills High School  
24 project, you were -- are you familiar with the old Mills  
25 High School that was there on Dixon Road as well?

## DIRECT EXAMINATION

1 A. Yes.

2 Q. And it's my understanding that the old Mills High  
3 School was to be converted into a middle school. Was that  
4 your understanding?

5 A. Within that 55 million?

6 Q. No. I'm just saying just --

7 A. At some point? Yes. At some point in time, yes.

8 Q. Was WD&D also responsible for the schematic drawings  
9 for the conversion of the Mills -- old Mills High School  
10 to convert it into a middle school?

11 A. Yes.

12 Q. All right. So but as it -- it was your understanding  
13 that, as it relates to the construction of Mills High  
14 School -- what did that construction consist of,  
15 Mr. Duckery?

16 A. I can't remember the square footage exactly, but --

17 Q. No, no, no. I'm just saying -- of course, we know  
18 there was going to be a high school building, yes?

19 A. Yes.

20 Q. And a football stadium or a football field?

21 A. Eventually, yes, that came within the project. But  
22 during the first initial meeting, the building itself was  
23 a \$55 million building.

24 Q. So \$55 million building just for the building itself  
25 just for the high school. Is that correct?

## DIRECT EXAMINATION

1 A. Yes.

2 Q. And what did Mr. Scott say to you in reference to  
3 that initial concept, a building -- a \$55 million  
4 building?

5 A. The 55 million, once we presented, I believe it was  
6 Dr. Guess, Derek Scott, Jay Clark, Brad Chilcote, myself,  
7 and the late John Walker.

8 Q. Mr. Walker was there as well?

9 A. Yeah, Mr. Walker was there.

10 Q. Okay.

11 A. We presented the building, showed it to them, showed  
12 them what we -- what we designed for 55 million. We went  
13 over the current location -- putting it in the current  
14 location and alternate locations throughout Pulaski  
15 county.

16 Q. Okay. All right. And did you get any response or  
17 any reaction from either Dr. Guess or Mr. Scott as it  
18 related to that initial proposal?

19 A. Everything went fine and we got the -- we got the  
20 go-ahead.

21 Q. You got the go-ahead.

22 So at some point in time, it's my understanding that  
23 you, meaning WD&D -- you were told that you needed to  
24 scale back this project. Is that correct?

25 A. That's correct.

## DIRECT EXAMINATION

1 Q. I'm going to direct your attention, Mr. Duckery, to  
2 Plaintiff's Exhibit Number 55. I'm sorry. Plaintiff's  
3 Exhibit Number 53 that's already been introduced into  
4 evidence. And I'm going to show you -- you see  
5 Plaintiff's Exhibit 55, the sticker that's there? I'm  
6 sorry. 53.

7 A. Yes.

8 Q. 53. And of course this is an email that's dated  
9 March 11, 2016. Do you see that?

10 A. Yes.

11 Q. And it's an email from Mike Meadors. Who is Mike  
12 Meadors?

13 A. Mike Meadors used to work for Baldwin & Shell. He was  
14 an estimator.

15 Q. Mike Meadors was the estimator for Baldwin & Shell?

16 A. Yeah.

17 Q. Of course, Baldwin & Shell was the construction  
18 company that was hired to do the Mills project, yes?

19 A. That's correct.

20 Q. And, of course, this email is dated Friday, March 11,  
21 2016, at 10:26 a.m. Is that correct?

22 A. That's correct.

23 Q. And, of course, it's an email that's sent to Brad  
24 Chilcote and to Jay Clark, the gentlemen you just  
25 mentioned. Is that right?

## DIRECT EXAMINATION

1 A. That's right.

2 Q. And, of course, it's CC'd to yourself. There is a  
3 Tommy Rutherford. Who is Mr. Rutherford?

4 A. He works at Baldwin & Shell.

5 Q. What about Chuck Hesselbein? That's  
6 H-e-s-s-e-l-b-e-i-n.

7 A. Baldwin & Shell.

8 Q. Baldwin & Shell.

9 And, of course, we have Ray Horsey --

10 A. Roy.

11 Q. I'm sorry. Roy Horsey, H-o-r-s-e-y.

12 A. Baldwin & Shell.

13 Q. Baldwin & Shell.

14 And out of these individuals who are listed here, how  
15 many of these persons are African-American?

16 A. Only myself.

17 Q. Only yourself.

18 Then, of course, it talks from yesterday's meeting,  
19 meaning there was a meeting that took place on March 10,  
20 2016. Is that correct?

21 A. That's correct.

22 Q. And let me -- and do you know whether or not that  
23 meeting was the meeting that you were talking about  
24 earlier? Was that an earlier meeting?

25 A. I can't recall.



## DIRECT EXAMINATION

1 Q. Okay. That's fine.

2 And let me show you a document -- another page of  
3 Plaintiff's Exhibit Number 53, and ask you if you can  
4 identify what this document is. I think it's fairly  
5 clear.

6 A. Yes. It's the schematic estimate for the high  
7 school.

8 Q. Okay.

9 A. The field house, football renovation, baseball,  
10 softball, practice field, site work, concession stand,  
11 toilet, and modify the existing locker room and total at  
12 the bottom.

13 Q. All right. And it looks like, as it relates to the  
14 high school, the project had a program area of 177,170  
15 square feet. Did I read that correctly?

16 A. That's correct.

17 Q. And also let me ask you this, Mr. Duckery. There is  
18 a Arkansas -- the State of Arkansas has what's called  
19 minimum standards as it relates to the construction of  
20 high schools, elementary schools, and junior high. Is  
21 that correct?

22 A. That's correct.

23 Q. Can you explain to the ladies and gentlemen of the  
24 jury as far as what those minimum standards consist of?

25 A. Sure. For example, if -- if you were going to do a

## DIRECT EXAMINATION

1 classroom for a high school -- the standards are different  
2 from high school, middle school, elementary school.

3 But, for instance, a high school, the minimum  
4 classroom square footage might be 850 square feet, and  
5 that's the minimum that you can have for a classroom and  
6 you have to design to that minimum. You can go over the  
7 850, but you can't go under.

8 Q. What about the hallways? Are there minimum standards  
9 for hallways in high schools?

10 A. They're based on the -- based on the number of  
11 students. It's a common practice for us to try to keep  
12 the hallways at least nine feet.

13 Q. Nine feet in width?

14 A. Yes.

15 Q. Okay. All right. And, of course, the minimum  
16 standards are the standards that the State of Arkansas set  
17 saying, you can't below those standards but you can surely  
18 exceed those standards. Is that correct?

19 A. That's correct.

20 Q. Whenever you are designing -- let's say, WD&D, is it  
21 WD&D's practice to -- to design above the minimum  
22 standards?

23 A. Yes.

24 Q. Okay. Now, according to this page that's found in  
25 Plaintiff's Exhibit Number 53, we see that the new high

## DIRECT EXAMINATION

1 school had a proposed square foot footprint, shall I say,  
2 of 177,170 square feet. Is that correct?

3 A. That's correct.

4 Q. Then, of course, we had the new field house which was  
5 -- had in the original design concept of 44,857 square  
6 feet correct?

7 A. Correct.

8 Q. Then, of course, the football field renovations, that  
9 was 90,142 square feet. Is that correct?

10 A. That's correct.

11 Q. And site work. What is -- what is site work,  
12 Mr. Duckery?

13 A. So the site work is basically to, like, prepare the  
14 building pads. For instance, take Mills High School.  
15 Half it is on rock quarry. The other half is on bad soil.  
16 So, basically, you're going in and prepping the bad soil  
17 so it can be sturdy enough to support the building. And  
18 also you might have to undercut the rock in order to get  
19 the building to set in there. So that's part of site  
20 work.

21 Q. Got you. Okay.

22 Then, of course, we also have the concession stand  
23 and toilet buildings, 5,008 square feet. Is that correct?

24 A. That's correct.

25 Q. And modify existing locker room building, 6,575

## DIRECT EXAMINATION

1 square feet, correct?

2 A. That's correct.

3 Q. And the total project square foot is 517,859 square  
4 feet. Is that correct?

5 A. That is correct.

6 Q. And the estimated cost that Baldwin & Shell came up  
7 with was \$57,000,864.82 for the total construction project  
8 budget for Mills High School, correct?

9 A. Yes.

10 Q. I'm sorry?

11 A. I was trying to make sure you said the number right.

12 Q. Let me go back. \$557,864,082.

13 A. Correct.

14 Q. Okay. I don't know what I said, but --

15 A. You said cents.

16 Q. I'm sorry. There you go.

17 All right. 57,800,000 project. And were you a part  
18 of a meeting when this estimate was presented to Dr. Guess  
19 and/or Derek Scott?

20 A. Yes.

21 Q. What response did you get?

22 A. That we needed to reduce -- that we needed to reduce  
23 the size of -- we needed reduce the project. We need to  
24 reduce the size of the building in order to get the  
25 numbers down. We didn't get a number, but to get the

## DIRECT EXAMINATION

1 numbers down. They couldn't move forward with the numbers  
2 at this -- at this price.

3 Q. Of course, that was mainly coming from Derek Scott.  
4 Is that right?

5 A. That's correct.

6 Q. And I believe at this point in time, Derek Scott was  
7 your primary point of contact on behalf of Pulaski County  
8 Special School District, yes?

9 A. That's correct.

10 Q. Is that correct?

11 A. Yes.

12 Q. All right. Did you have any meetings during these  
13 initials phases with Dr. Janice Warren?

14 A. No.

15 Q. Okay. So it was just Derek Scott?

16 A. Yes.

17 Q. Okay. And so when you presented -- when Baldwin &  
18 Shell and I guess yourself presented this plan to  
19 Mr. Scott, he said, that's too much money, you need to  
20 scale back. Yes?

21 A. That's correct.

22 Q. Okay. And what did you do after you were told that  
23 by Mr. Scott?

24 A. Revised the floor plan.

25 Q. Okay. I'm going to show you another document, a page

## DIRECT EXAMINATION

1 of Exhibit 53. First of all, the page that I initially  
2 showed you that had 177,000 square feet, this is March, I  
3 believe, 8 of 2016. Does that sound about right to you?

4 A. Yes.

5 Q. And then, of course, I'm presenting you with another  
6 document from Baldwin & Shell. Do you recognize this?

7 A. Yes.

8 Q. And can you -- again, can you tell the ladies and  
9 gentlemen of the jury what this represents?

10 A. This is a design development estimate.

11 Q. Who prepared this?

12 A. Baldwin & Shell.

13 Q. Did they prepare it in consultation with WD&D?

14 A. They -- yes. They asked us for the revised floor  
15 plan.

16 Q. Okay. So after you had the initial meeting with  
17 Derek Scott and told them it was going to cost \$57 million  
18 in order to construct Mills High School, then WD&D had to  
19 revise the schematic drawings in order to reduce things.  
20 Is that correct?

21 A. That's correct.

22 Q. Now, we see a new high school that has 155,908 square  
23 feet. Is that correct?

24 A. That's correct.

25 Q. So we went from 177,000 -- do you see that?

## DIRECT EXAMINATION

1 A. Yes.

2 Q. To 155,908 square feet, yes?

3 A. Yes.

4 Q. Of course, that brings the cost down, yes?

5 A. Yes.

6 Q. Okay. And also we see the field house at 44,759. I  
7 believe that may have actually gone up a little bit. It  
8 was 44,857. Is that correct?

9 A. That's correct.

10 Q. And then, of course, it went up to 45,759, yes?

11 A. Yes.

12 Q. And, of course, the 177,170 square feet down to  
13 155,908 square feet, that's roughly about 24,000 square  
14 feet that you reduced or cut off?

15 A. That's correct.

16 Q. Correct?

17 All right. And the football field renovation was  
18 taken out. Is that correct? On this document that's  
19 dated March 8, 2016 -- you see that?

20 A. Yes.

21 Q. We see a football field renovation, 90,142 square  
22 feet. Do you see that?

23 A. Yes.

24 Q. But I don't see it on the one -- the second estimate  
25 that's dated August 12, 2016. Was it eliminated for some

## DIRECT EXAMINATION

1 reason?

2 A. No. Derek Scott had a way of moving money around and  
3 under -- under different avenues to get that project done.

4 Q. Okay. You say that kind of with a smile.

5 A. Well, I mean, he was clever at doing it, so.

6 Q. Gotcha. Okay.

7 So we now see a project that went from 517,859 square  
8 feet brought all the way down to 210,255 square feet, yes?

9 A. Yes.

10 Q. That's a huge difference of roughly some 235,000  
11 square feet that has been eliminated.

12 A. Yes.

13 Q. Correct?

14 A. Correct.

15 Q. So the building that was initially designed for  
16 \$57,864,082 was now brought and reduced down to  
17 \$41,653,790. I'm sorry. \$41,653,790. Yes?

18 A. Yes.

19 Q. And there is something down here called a revised  
20 budget, 36 million 757,58. Do you know what that  
21 represents?

22 A. I can't recall at the moment.

23 Q. Okay. All right. So, basically, you had to do a lot  
24 of things in order to scale back this project, yes?

25 A. Yes.



## DIRECT EXAMINATION

1 Q. Have you ever gone out to Robinson Middle School and  
2 looked at that middle school?

3 A. No.

4 Q. You have not?

5 A. No.

6 Q. Of course, you've been out to Maumelle, yes?

7 A. Yes.

8 Q. Maumelle High School?

9 A. Yes.

10 Q. Even the middle school?

11 A. Yes.

12 Q. I mean, of course, those schools walls are masonry  
13 brick walls. Is that correct?

14 A. That's correct.

15 Q. And, of course, the walls that were built at Mills  
16 were gypsum board walls. Is that correct?

17 A. That's correct.

18 Q. Now, remember I asked this question to Mr. Johnson  
19 back in the school desegregation case. If the big, bad  
20 wolf was coming, which building would you rather be in,  
21 Robinson Middle versus Mills High School?

22 MR. KEES: Objection, Your Honor. He hasn't  
23 even been to Robinson Middle.

24 MR. PORTER: Maumelle. I'm sorry.

25 BY MR. PORTER:

## DIRECT EXAMINATION

1 Q. If the big, bad wolf was coming, which school would  
2 you rather be in, Maumelle High School or versus that of  
3 Mills High School?

4 A. Hard question to answer, but -- because there's  
5 actually a safe room at Mills. That's why I'm saying. It  
6 depends on where you're at, but overall, Maumelle.

7 Q. Got you. Now, of course, you had to do a lot of  
8 things in order to cut corners, reduce cost, as it relates  
9 to the Mills project. Is that correct?

10 A. That's correct.

11 Q. And I'm looking at your deposition where you said  
12 some things. I believe in your deposition you said the  
13 field house was changed as well.

14 How was the field house changed?

15 A. Let's see. I think we incorporated the concession  
16 stand with the field house.

17 Q. Were they supposed to be separate facility?

18 A. They were separate at first.

19 Q. Okay. So what's the significance of having a  
20 separate concession stand to the field house as opposed to  
21 having it together?

22 A. Having it together would actually reduce cost.

23 Q. Reduce cost?

24 A. Because of the plumbing and stuff like that.

25 Q. What is the benefit, I guess, of having a concession

## DIRECT EXAMINATION

1 stand separate from the -- from the field house?

2 A. If you have -- if you have the space -- if you have  
3 the space, then that keeps the public away from the  
4 students, if the students are coming out of the field  
5 house. But with Mills, we had a site challenge because we  
6 were confined by the rock quarry, by the state highway,  
7 and the property that's adjacent to Mills.

8 Q. Okay. I believe you indicated in your testimony that  
9 the separate facility had been cut by some 3,000 feet.

10 Do you recall that?

11 A. I don't recall that, but if I said it, that's right.

12 Q. Okay. All right.

13 I also believe in your testimony you indicated that  
14 you had to make smaller hallways at the Mills High School.  
15 Is that correct?

16 A. From the initial design?

17 Q. Yes.

18 A. Yes. So the initial design, the hallways were wider.  
19 It was a large building. So the only way sometimes to get  
20 that large amount of money out of buildings is to start --  
21 if you go above the State standard, is to start to come  
22 down to State standards, not to go below it.

23 Q. Right. So isn't it true, Mr. Duckery, that whenever  
24 you have a high school, you got students traversing in the  
25 hallway, you want to have enough wide space in order to

## DIRECT EXAMINATION

1 give students their space. Is that correct?

2 A. That's correct.

3 Q. When you make it narrow or smaller, you're going to  
4 compact people in, yes?

5 A. Yes.

6 Q. And that can create some problems within itself. Is  
7 that correct?

8 A. Yes.

9 Q. Kind of makes it unsafe?

10 A. Egress-wise? Maybe, yes.

11 Q. All right. I believe in your testimony you indicated  
12 that you deleted the practice field from the project.

13 First of all, can you tell the ladies and gentlemen  
14 of the jury what a practice field is? I know back in my  
15 day --

16 A. We only had one field.

17 Q. That's right. The field we played on, field we  
18 practiced on.

19 A. That was it.

20 Basically, your practice field is -- it's just --  
21 it's not as fancy as the -- as the field that you play on,  
22 but it's the practice field for the football team to  
23 practice on in order not to mess up the field -- the game  
24 field, basically.

25 Q. Sort of an indoor type facility?

## DIRECT EXAMINATION

1 A. We actually had I think -- at one time I think we had  
2 -- we had an indoor and an outdoor at one time.

3 Q. Okay. But Mr. Scott -- in order for you to cut cost,  
4 you deleted the practice field from the project. Is that  
5 correct?

6 A. That's correct.

7 Q. And that was saving of some \$84,000. Do you recall?  
8 85,000?

9 A. I can't recall, but if I said that, then, yes.

10 Q. I mean, I can show you in your deposition if you want  
11 to.

12 A. It was fresh on my mind back then. If I said it in  
13 deposition, then --

14 Q. All right. Very good.

15 Also, I believe you had to do other things, such as  
16 change the lighting scheme at Mills High School. Is that  
17 correct?

18 A. It wasn't quite the lights. If I could kind of  
19 explain for a second.

20 Q. Go ahead.

21 A. If you look up here, you kind of got some clouds  
22 where that part of the ceiling kind of hangs a little bit  
23 lower than the other part. So we had to eliminate things  
24 like that and kind of made the ceiling flush. So those  
25 are more expensive. So it wasn't quite the lighting --

## DIRECT EXAMINATION

1 the lights itself. It was like the clouds.

2 Q. The design of the lights?

3 A. The design.

4 Q. Okay. So, of course, in the federal courthouse, we  
5 have more expensive lighting design I guess than you would  
6 have at a place like Mills High School, yes?

7 A. Yeah. Not quite. Not with the can lights. I think  
8 we could probably do a little better.

9 Q. Okay. All right. I believe --

10 A. That's only because technology.

11 Q. I believe you indicated that you said Derek Scott  
12 initially wanted this to be a green building. What do you  
13 mean by that? The Mills High School.

14 A. Yeah.

15 Q. We're talking about Mills?

16 A. Yes. So a LEED certified building, energy efficient  
17 building --

18 Q. When I mean LEED, I'm talking about L-E-E-D.

19 A. Yes.

20 Q. Yes?

21 A. So simple way to put it, it's an energy efficient  
22 building. You can get platinum. You can get gold. you  
23 can get certified. Mills High School is actually LEED  
24 certified. It's not LEED gold. It's not LEED silver or  
25 platinum, but it is LEED certified.

## DIRECT EXAMINATION

1 Q. Okay. And so Mr. Scott asked you to cut some as it  
2 related to LEED lightings. Isn't it true that Mr. Scott  
3 wanted you to rely more on skylights?

4 A. Yes. We did have more natural, but the -- that  
5 skylighting adds toward your LEED points. So we did have  
6 skylighting in the initial concept and design, along with  
7 light wells and everything else at that time.

8 Q. I believe you indicated in your deposition, you say,  
9 we took out skylights and we took out light wells. Is  
10 that correct?

11 A. Yes.

12 Q. And, again, that was for to -- to reduce cost, yes?

13 A. Correct.

14 Q. What is the benefit of having skylights and light  
15 wells?

16 A. To bring in more natural light so you don't have to  
17 use as much electricity to light a room, basically.

18 Q. Mm-hmm. I believe once you did all of that,  
19 eliminated some things, reduced some things, reduced  
20 hallways -- and I think you even testified that you even  
21 reduced the height of the building itself. Is that  
22 correct?

23 A. That is correct.

24 Q. What was the -- do you recall the -- how much you had  
25 to cut from the initial height of the building that was

## DIRECT EXAMINATION

1 initially planned versus what you went with?

2 A. I can't quite recall that, but if I had to try to  
3 recollect, I think I took two feet off of each floor.

4 Q. Two feet off each floor?

5 A. Yes.

6 Q. And, again, that was all done to try to reduce the  
7 cost, bring down the cost, yes?

8 A. Yes.

9 Q. And I also -- I believe you indicated that, once you  
10 did that, did you go back to Derek Scott and say, well,  
11 look, this is what we've come up with?

12 A. Yes.

13 Q. What did he say then?

14 A. We still need to reduce the cost.

15 Q. Still need to reduce some cost. So you went from  
16 177,000 to 154,000, you cut some things, and he said that  
17 still wasn't good enough, yes?

18 A. Right.

19 Q. Mr. -- go ahead.

20 A. So in between that, I didn't reduce the building  
21 until after he said we need to cut more cost. So get to a  
22 point that, after you've reduced square footage, you only  
23 have building height left, so you have to reduce the  
24 building height.

25 Q. Mr. Duckery, whenever you had these meetings with



## DIRECT EXAMINATION

1 Mr. Scott, did they ever mention to you anything about  
2 plan 2000?

3 A. No.

4 Q. That never came up?

5 A. Not that I recall, no.

6 Q. Did they ever mention to you that they were in the --  
7 that Pulaski County Special School District was in federal  
8 court litigation and that they had an obligation to ensure  
9 that their buildings were equal?

10 A. No.

11 Q. Never came up?

12 A. No.

13 Q. And I believe you indicated that before Dr. Warren  
14 became interim superintendent, again, you were meeting  
15 primarily with Derek Scott and I believe you also -- did  
16 you also have a meeting with Dr. Remele or at least have  
17 some interaction with Dr. Remele?

18 A. No.

19 Q. You did not?

20 A. Did not.

21 Q. I thought you said on page -- one thing I like to do,  
22 Mr. Duckery, when I have depositions -- like yours is 94  
23 pages. I like to do summaries. Summarize them. Makes it  
24 much more easier.

25 Let me go to Page 74. And do you remember that we

## DIRECT EXAMINATION

1 took your deposition -- or at least Ms. Jenkins took your  
2 deposition on May 18 of 2020? Do you see that?

3 A. I remember it was 2020. I do remember that.

4 Q. May 18, 2020?

5 A. I believe that might have been the date.

6 Q. Of course, this is a deposition of Earnest Lamont  
7 Duckery.

8 A. That's me.

9 Q. That's you?

10 A. Yes.

11 Q. You have to speak a little bit louder.

12 A. Yes. That's me.

13 Q. I want to go to Page 74 --

14 A. Sure.

15 Q. -- of your deposition. Let me go to Page 73 first.  
16 Page 73.

17 And the question at Line 20, again, talking about  
18 Dr. Warren.

19 "So she didn't become interim superintendent until  
20 July of 2017."

21 What is your answer?

22 A. "I can't recall, but it was after construction  
23 started."

24 Q. Next question, "It was after construction had started  
25 that" -- and then you said?

## DIRECT EXAMINATION

1 A. "Yes."

2 Q. And then the next page on Page 74, the question, "And  
3 she was interim superintendent that you began meeting with  
4 her?"

5 A. Yes.

6 Q. Your answer?

7 A. "Yes."

8 Q. "Before that was, your contact with Pulaski County  
9 Special School District?" Who was you -- I'm sorry. "Who  
10 was your contact with Pulaski County Special School  
11 District?"

12 A. "Derek Scott."

13 Q. "All right. Did you interact with Dr. Remele, board  
14 president, at any time?"

15 What's your answer?

16 A. "Yes."

17 Q. "And on what occasion?"

18 A. "During one of the meetings she would speak."

19 Q. "Was this" -- and you said?

20 A. "Or she would ask a question and we would answer."

21 Q. "Was this one of the meetings that Dr. Warren  
22 hosted?"

23 A. "Yes."

24 Q. "And where was -- where were those meetings held?"

25 A. "At the administration building."

## DIRECT EXAMINATION

1 Q. So you did -- you did have a meeting with Dr. Remele.  
2 And, of course, Dr. Remele was engaged in the meeting,  
3 asking various questions, yes?

4 A. Yes.

5 Q. Okay. But prior to the actual construction starting,  
6 you were having these construction meetings, and those  
7 meetings, of course, with Derek Scott. And that's when  
8 Mr. Scott told you you needed to reduce the size of the  
9 building. Is that correct?

10 A. Yes.

11 Q. And do you know whether or not -- strike that.

12 And so you had a second round where you met with  
13 Mr. Scott and you had a reduction in the project and  
14 Mr. Scott then told you that wasn't good enough. Is that  
15 correct?

16 A. That's correct.

17 Q. Of course, Dr. Warren wasn't privy to that meeting or  
18 that information to your knowledge. Is that correct?

19 A. That's correct.

20 Q. And, again, whenever you were having these meetings  
21 with Derek Scott, Mr. Scott never mentioned to you about  
22 Plan 2000, correct?

23 A. No.

24 Q. I'm sorry?

25 A. No.

## DIRECT EXAMINATION

1 Q. Now, I want to ask you about this -- there's a  
2 concept called value engineering. Can you tell the ladies  
3 and gentlemen of the jury what is that?

4 A. Value engineering is basically -- trying to find an  
5 easy way to put it. Value engineering is kind of finding  
6 cost efficient products for which you have in the building  
7 that can bring the cost down.

8 Q. All right. So rather than getting Bounty paper  
9 towels, you want to value paper towels. Is that correct?

10 A. That's correct.

11 Q. My wife was here earlier. She loves bargains. I  
12 like the Bounty.

13 So value engineering is just kind of a sophisticated  
14 way of saying, we want to do something, build something  
15 with maybe lesser quality materials?

16 A. Yes.

17 Q. And so that's basically what Derek Scott asked you to  
18 do as it related to the Mills High School project, yes?

19 A. Yes.

20 Q. Is that correct?

21 A. That's correct.

22 Q. So after you went back the second time around trying  
23 to reduce the project again, again, would you explain to  
24 the ladies and gentlemen of the jury what did you do in  
25 order to get this project -- the project cost down for the

## DIRECT EXAMINATION

1 Mills project?

2 A. So basically -- basically, once we're asked to reduce  
3 the plan or that it might be over budget, we'll reduce the  
4 plan or reduce -- you know, we'll revise the drawings. We  
5 take it back to Derek Scott. Derek Scott would have us to  
6 send it -- send everything to Baldwin & Shell. Baldwin &  
7 Shell would do their estimate. The estimates were too  
8 high, then we have to revise it again. So we did that --  
9 we did that at least three times until we got down to a  
10 number where it was a go for him.

11 Q. And, of course, since the Mills High School has been  
12 constructed, have you read about any newspaper articles  
13 that talk about the inequality of the Mills High School as  
14 compared to maybe Robinson or Maumelle High School?

15 A. I think I read in the paper before the last trial.

16 Q. So there were some issues that were raised, of  
17 course, by the intervenors in the case that Mills was that  
18 of an inferior product as it related to other high schools  
19 such as Maumelle and Robinson Middle. Is that correct?

20 A. That's correct, because you can't build a high school  
21 for the same price as a middle school. Middle schools are  
22 just cheaper. If you have more money, you have a better  
23 middle school.

24 Q. As a matter of fact, I'm glad you brought that point  
25 up, Mr. Duckery. Typically, whenever you are

## DIRECT EXAMINATION

1 constructing, designing a high school, typically the cost  
2 of a high school should be more than that of a middle  
3 school. Is that correct?

4 A. That's correct.

5 Q. Because you have more complex things that go into a  
6 high school than you would versus a middle school,  
7 correct?

8 A. That's correct. I mean, middle school you don't have  
9 to -- you don't have to have an auditorium. High school,  
10 you have to have an auditorium. That can easily be a \$5  
11 million auditorium. So, you know, you don't have to have  
12 auxiliary gyms in middle schools all the time. So those  
13 are extra cost that you have at high schools that you  
14 won't have at middle schools.

15 Q. And did you become aware of the fact, sir, that at  
16 the Mills High School, the Mills gymnasium was too small  
17 to host AAA basketball tournaments?

18 A. No.

19 Q. You did not? Okay.

20 Did you -- were you ever told, Mr. Duckery, that the  
21 court, Judge Marshall, in the desegregation case had  
22 required that the Mills High School project be a 50, \$55  
23 million project?

24 A. I was aware.

25 Q. I'm sorry?

## DIRECT EXAMINATION

1 A. I think I became aware, yes.

2 Q. You became aware of that?

3 A. Mm-hmm.

4 Q. So even though it was required by the Court, you were  
5 told by Mr. Scott to reduce that?

6 A. Oh, no, no, no. I'm sorry. I didn't hear that until  
7 like 2020, not back in 2015.

8 Q. Okay. You weren't told that by Mr. Scott back then,  
9 correct?

10 A. That's correct.

11 Q. I believe you indicated that the score board was  
12 eliminated as required by Derek Scott. Is that correct?

13 A. I can't recall, but if I said it in deposition, then  
14 yes.

15 Q. Do you know what score board, either basketball score  
16 board or football score board?

17 A. I can't recall which one.

18 Q. I want to direct your attention to Page 56 of your  
19 deposition.

20 A. Sure.

21 Q. Of course, I know it's been some time since you've  
22 given a deposition. I'm not trying to suggest you're  
23 lying or anything. I just kind of want to refresh your  
24 memory.

25 A. I've done 51 projects in between Mills and today. If



## DIRECT EXAMINATION

1 I have 51 kids, I wouldn't remember.

2 Q. Congratulations on that, yeah. Keep you quite busy.  
3 That's good.

4 All right. Page 56 of your deposition -- and see if  
5 that refreshes your recollection.

6 A. Okay.

7 Q. I'm starting at Line 7. I believe it says,  
8 Now, I think -- this is a question that Ms. Jenkins is  
9 asking you. She said, "Now, I think the score board  
10 allowance was even higher than that. Let's see if we  
11 can't -- there has got to be another" -- and then your  
12 response.

13 A. "Yes. It was eliminated per instructions."

14 Q. Question, "Okay. So you had initially included in  
15 your design?" Answer?

16 A. "Yes."

17 Q. "All right. And who gave the instruction to  
18 eliminate?"

19 A. If you can scoot up just a little bit. I know the  
20 answer, but -- "Derek Scott."

21 Q. Derek Scott. Okay.

22 So Mr. Scott had instructed you that another thing in  
23 order that you needed to do to eliminate cost was to  
24 eliminate the score board. Is that correct?

25 A. That's correct.

## DIRECT EXAMINATION

1 Q. Do you know whether that was -- do you know whether  
2 or not that was for the football field, the basketball  
3 field, or -- I mean, floor?

4 A. I can't recall.

5 Q. Can't recall. Okay.

6 Of course, I've been out to Mills indoor practice  
7 facility.

8 A. Yes.

9 Q. And would it be fair to say that indoor practice  
10 facility is almost akin to a metal building?

11 A. Yes.

12 Q. Okay. And, of course, I've gone out to Robinson  
13 Middle. I don't think you've been out to Robinson Middle,  
14 have you?

15 A. No.

16 Q. I would challenge you to do that.

17 Have you ever gone out to the Sylvan Hills High  
18 School construction project?

19 A. No. Sylvan Hills? The new high school?

20 Q. Yes.

21 A. Yes.

22 Q. You have?

23 A. Yes.

24 Q. Very large complex -- project complex. Is that  
25 correct?

## DIRECT EXAMINATION

1 A. Yes.

2 Q. Probably almost twice the size of that of Mills High  
3 School?

4 A. Yes.

5 Q. Also, I believe you indicated in your testimony that  
6 the concession/toilet building had an original price of  
7 \$1,420,918. Do you recall that?

8 A. I don't recall, but if I said it, then yes.

9 Q. Okay. Of course, that had to be eliminated, yes?

10 A. Yes.

11 Q. I'm sorry?

12 A. I believe so. If I said it in deposition, then yes.

13 Q. I think what happened was, it was supposed to have  
14 been a separate -- was that supposed to have been a  
15 separate building and then it was conjoined --

16 A. Yes.

17 Q. -- to the practice field.

18 A. Yes.

19 Q. And I guess that would kind of create problems when  
20 you're having your student athletes going in and out of  
21 the field house and then, of course, you have the public  
22 right there as well. Is that correct?

23 A. Yes. And then you get into crowd control and gates  
24 and things like that, yes.

25 Q. Okay. Just a second.

## CROSS-EXAMINATION

1 MR. PORTER: Your Honor, at this time, I'll pass  
2 the witness.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. KEES:

6 Q. Mr. Duckery, Cody Kees. I was at your deposition two  
7 years ago.

8 A. Yes.

9 Q. Mr. Porter questioned you pretty extensively at the  
10 desegregation case in the summer of 2020. Is that right?

11 A. Yes. Yes. Yes.

12 Q. You sat on the witness stand like this?

13 A. Yes. That's where I first met you. Yes.

14 Q. Judge Marshall was beside you?

15 A. Yes.

16 Q. And you went in -- and that's the litigation where  
17 the lawyers fought over the Mills versus Robinson. Do you  
18 remember that?

19 A. Yes.

20 Q. And then the Judge ultimately issued an order and he  
21 described Mills as an A-plus school. Do you agree with  
22 that?

23 A. Yes.

24 Q. And then we're here at this trial about an employment  
25 decision by the board related to Dr. Warren. You didn't

## REDIRECT EXAMINATION

1 have anything to do with that decision, did you?

2 A. No, I did not.

3 Q. Thank you, sir.

4 MR. KEES: That's all I have, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. PORTER:

7 Q. Mr. Duckery, whenever buildings are built, you have  
8 like placards on the building. Is that correct?

9 A. That's correct.

10 MR. KEES: Scope, Your Honor.

11 THE COURT: Is this within the scope of his  
12 cross-examination?

13 MR. PORTER: Well, it kind of goes to the issue  
14 involving Dr. Warren, Your Honor, as far as it relates to  
15 her claim of discrimination. So I think it's certainly  
16 within that scope.

17 THE COURT: I think his only question was, you  
18 don't know anything about this. Is this going to address  
19 what he knows about that?

20 MR. PORTER: Yes. The placard.

21 BY MR. PORTER:

22 Q. And, Mr. Duckery, was there some conversation that  
23 you had with Dr. Remele about not wanting to have  
24 Dr. Warren's name put on the placard for the Mills school?

25 A. No.

## REDIRECT EXAMINATION

1 Q. Do you recall?

2 A. No.

3 Q. Hold on just a second.

4 A. Not that I can recall.

5 Q. Sir, WD&D hopes to do future business with the  
6 Pulaski County Special School District. Is that a fair  
7 statement?

8 A. I'm sorry?

9 Q. I said certainly --

10 MR. KEES: Scope, Your Honor.

11 MR. PORTER: Never mind. I'll strike that. I'm  
12 going back to my original question. I'm sorry.

13 BY MR. PORTER:

14 Q. Of course, you were asked a question about did Judge  
15 Marshall say that the Mills High School was an A-plus  
16 building.

17 A. Yes.

18 Q. And, of course, he gave a much higher score for that  
19 of Robinson, correct?

20 A. He said they were not equal, yes.

21 Q. All right. So just because it is an A-plus building,  
22 the requirement had to be that the district had to make  
23 those constructions equal, correct?

24 A. Correct.

25 Q. And you already testified, of course, the buildings

## REDIRECT EXAMINATION

1 were not equal, yes?

2 A. Correct.

3 Q. Do you recall being asked the question, Mr. Duckery,  
4 about cornerstone during your deposition?

5 A. I believe so, but I think, when I was asked that, I  
6 might have done a correction and said building plaque.

7 Q. Okay.

8 A. Maybe. Can't quite recall, but I think it went -- I  
9 think it went something like that. I'm not for sure.

10 Q. In other words, rather than having a cornerstone like  
11 at our church --

12 A. Right, because the cornerstone is on the outside of  
13 the building. It's concrete and it sits at the corner  
14 versus a building plaque that's on the inside in the  
15 vestibule just beyond the entry or something like that.  
16 So I think I was just trying to -- I think I was just  
17 trying to clarify the terminology.

18 Q. Got you. I recall that in your testimony.

19 All right. Thank you. Appreciate you.

20 THE COURT: Mr. Duckery, you can stand down and  
21 you're free to go.

22 \* \* \* \* \*

23 REPORTER'S CERTIFICATE

24 I, Valarie D., Flora, CCR, certify that the foregoing  
25 is a correct transcript of proceedings in the

REDIRECT EXAMINATION

1 above-entitled matter.

2 Dated this the 1st day of April, 2022.

3

4 /s/ Valarie D. Flora, CCR

5 -----

6 United States Court Reporter

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Valarie D. Flora, FCRR, TX-CSR, AR-CCR  
United States Court Reporter  
Valarie\_Flora@ared.uscourts.gov (501) 604-5105